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United States
Circuit Court of Appeals
For the Ninth Circuit

TONG JEUNG,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United
States for the Northern District of California,
Southern Division.

FILED

MAR 20 1935

PAUL W. IVERSEN



NO. 7296

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Circuit Court of Appeals
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TONG JEUNG,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the Southern Division of the United States
District Court, Northern District
of California

No. 24280-S

UNITED STATES OF AMERICA

vs.

TONG JEUNG

NAMES OF ATTORNEYS:

For Defendant and Appellant:

STEPHEN M. WHITE, Esq.,
576 Sacramento St., San Francisco, Calif.

For Plaintiff and Appellee:

UNITED STATES ATTORNEY,
San Francisco, Calif.

The United States of America,
Northern District of California, ss.

THE UNITED STATES

vs.

TONG JEUNG

COMPLAINT FOR VIOLATION OF
Section.....R. S.

Before me, the undersigned, a robt. h. voss for the Northern of Calif, personally appeared this day 30th, who, on oath, deposes and says that TONG JEUNG, on or about the 30 day of Sept., 1932, at San Francisco in the Northern District of Calif, did unlawfully, was and is a Chinese person unlawfully in the United States contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And furthermore the said deponent says he has reason to believe and does believe that..... are material witnesses to the subject-matter of this complaint.

ROBERT H. VOSS

Subscribed and sworn to before me this 30th day of September, 1932

FRANK O. NEBEKER

U. S. Commissioner

[Endorsed]: Filed 9—30, 1932. Frank O. Nebeker, U. S. Commissioner. [1*]

The United States of America
Northern District of California, ss.

No. 1289

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TONG JEUNG

Defendant.

JUDGMENT AND ORDER OF DEPORTATION

WHEREAS, TONG JEUNG stands charged on the oath of ROBERT H. VOSS, Inspector, U. S. Immigration Service, before me, FRANK O. NEBEKER, a United States Commissioner in and for the Northern District of California, as follows, to-wit: That within the jurisdiction of the United States aforesaid, and within the Northern District of California, and after the passage by the Congress of the United States of an act entitled, "An Act to Amend an Act entitled "An Act to execute certain treaty stipulations relating to Chinese' approved May 6, 1882, and the acts amendatory thereof and supplemental thereto," the said TONG JEUNG did come into the United States from a foreign place, and having come, has remained within the United States; that the said TONG JEUNG has been found and now is unlawfully within the United States, and that at all times hereinafter mentioned the said TONG JEUNG is and was a Chinese laborer and a Chinese person, and a person of Chinese descent; and whereas, the said

TONG JEUNG was duly apprehended upon said charge in the aforesaid Northern District of California, and whereas, an examination was thereupon had before me of said TONG JEUNG upon the said charge on the 13th day of October, 1932, at which he was fully informed of his rights and given an opportunity to present evidence, and whereupon STEPHEN M. WHITE [2] attorney and counselor-at-law, appeared for the said TONG JEUNG, at his request, and from the evidence produced before me, it appearing that the said TONG JEUNG is by race, language and color a Chinese person and a person of Chinese descent and a laborer by occupation; and whereas, the said TONG JEUNG has failed to show by any affirmative proof to my satisfaction, his lawful right to remain in the United States; and it appearing to me that said TONG JEUNG has been given a sufficient opportunity to produce evidence and witnesses to show his right to remain in the United States; and whereas, the said TONG JEUNG has not made it appear to me that he is a subject or citizen of any other country than China, and it appears that he is a Chinese laborer and is a subject of the Republic of China, and is not registered and not a member of the exempt class of Chinese persons provided for in and by said Act of Congress.

NOW, THEREFORE, I hereby order and adjudge the said TONG JEUNG to be immediately removed from the United States, to the Republic of China, and I order that said removal and deportation of said TONG JEUNG be made from the Port of San Francisco, within the limits of the

Northern District of California, and I further order that said TONG JEUNG be, and he hereby is committed to the custody of the United States Marshal for the Northern District of California, for the purpose aforesaid, and that until such time as this judgment can be executed said TONG JEUNG shall be detained in the County Jail of the County of San Francisco, in the Northern District of California, at San Francisco, in said District, and in such other jails within the United States as it may become necessary for the Marshal or his deputies to leave the defendant during the execution of this judgment for safekeeping; and a certified copy of this judgment shall be the process upon which said TONG JEUNG [3] TONG JEUNG shall be conveyed to and detained in said jails, and the keepers of said jails shall receive him and detain him therein and a certified copy of this judgment shall be the process upon which said removal of said TONG JEUNG shall be made from the United States to the Republic of China.

And said process shall be executed by Fred L. Esola, United States Marshal for said District, or such of his deputies as he may designate for that purpose.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and fixed my seal on the 7th day of December 1932.

[Seal]

FRANK O. NEBEKER,
United States Commissioner

(Picture of Tong Jeung pasted on original copy)

[Endorsed] Filed Dec 8, 1932 10:51 AM [4]

In the Southern Division of the United States
District Court, in and for the Northern
District of California.

No. 24280-S

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TONG JEUNG,

Defendant.

NOTICE OF APPEAL.

To United States of America, Plaintiff, to George J. Hatfield, United States Attorney for the Northern District of California, the attorney for Plaintiff, and to Honorable Frank O. Nebeker, United States Commissioner in and for the Southern Division of the United States District Court for the Northern District of California:

You and each of you will please take notice that Tong Jeung, the defendant herein, hereby appeals to the Judge of the United States District Court, in and for the Southern Division of the Northern District of California, and to the United States District Court, in and for the Southern Division of the Northern District of California, from the order and judgment of deportation rendered in the above entitled action by Honorable Frank O. Nebeker, United States Commissioner in and for the Southern Division of the United States District Court for the Northern District of California, on the ground that there was no jurisdiction over the person of

the defendant and the subject matter of the proceedings in the said United States Commissioner.

Dated this 6th. day of December, 1932.

TONG JEUNG

Defendant.

STEPHEN M. WHITE

Attorney for Defendant.

[Endorsed]: Filed Dec 6, 1932 [5]

[Title of Court and Cause.]

STIPULATION OF FACTS

IT IS HEREBY STIPULATED by and between the parties to the above entitled action, through their respective counsel, that the following facts may be deemed to be established and proven for all purpose of the trial of said action subject to defendant's objection hereby made that the court has no jurisdiction of the person or of the cause:

I.

That Tong Jeung, defendant and appellant herein, is a person of Chinese race and descent.

II.

That said defendant and appellant is a native and citizen of the Republic of China.

III.

That said defendant and appellant is a laborer.

IV.

That said defendant and appellant has no certificate of residence issued under the Chinese Exclusion Acts.

V.

That said defendant and appellant has no [6] certificate issued under Section 6 of the Chinese Exclusion Act of May 6, 1882, as amended by the Act of July 5, 1884. (8 USCA Sec. 265).

VI.

That said defendant and appellant came to the United States from China fourteen or fifteen years ago as a seaman on the steamer "Nanking".

VII.

That said defendant and appellant has never been admitted into the United States by any officer thereof.

VIII.

That neither parent of said defendant and appellant has ever been in the United States.

IX.

That on September 30, 1932, said defendant and appellant was found in San Francisco by Robert H. Voss, a duly qualified, competent and acting Immigrant Inspector of the United States and was thereupon examined under oath by said Voss.

X.

That in answer to questions then and there propounded to him by said Immigrant Inspector Voss said defendant and appellant then and there testi-

fied to the facts stipulated in paragraphs I to VIII hereof.

XI.

That thereafter and on September 30, 1932, said defendant and appellant was taken by said Immigrant Inspector Voss before Frank O. Nebeker, United States Commissioner for the Southern Division of the Northern District of California and that said Immigrant Inspector Voss then and there filed before said United States [7] Commissioner his sworn complaint in the above entitled matter.

XII.

That prior to the filing of said complaint by Immigrant Inspector Voss, as aforesaid, no warrant for the arrest of defendant and appellant had been issued.

XIII.

That upon the filing of said complaint before United States Commissioner Frank O. Nebeker by Immigrant Inspector Voss said United States Commissioner issued a warrant of arrest for defendant and appellant.

XIV.

That said warrant of arrest was thereupon on September 30, 1932, served upon said defendant and appellant by a United States Deputy Marshal.

XV.

That on October 13, 1932, a hearing was held before United States Commissioner Frank O. Nebeker as a result of which hearing said United States Commissioner duly made and entered his judgment

and order that defendant and appellant be deported to China.

XVI.

That at said hearing Stephen M. White, Attorney for defendant and appellant objected to the proceedings before the United States Commissioner on the grounds that the Commissioner did not have jurisdiction of the person of the defendant nor of the subject matter of the proceeding.

Dated: January 2, 1933.

STEPHEN M. WHITE

Attorney for Defendant and Appellant

I. M. PECKHAM

United States Attorney

Attorney for Plaintiff and Appellee.

[Endorsed] : Filed Jan 9, 1933 2:28 PM [8]

In the Southern Division of the United States
District Court for the Northern District
of California.

No. 24280-S

UNITED STATES OF AMERICA,

Plaintiff and Appellee

vs.

TONG JEUNG,

Defendant and Appellant.

JUDGMENT AND ORDER OF DEPORTATION

The above entitled cause came on regularly for hearing on the 31st day of May, 1933, on appeal

from an order of deportation theretofore duly made and entered by Frank O. Nebeker, United States Commissioner for the Northern District of California; and said appeal was on said date submitted for the decision of the Court on a Stipulation of Facts and Briefs filed by the respective parties; and, it appearing that said defendant and appellant, TONG JEUNG, stands charged before this Court on the oath of Robert H. Voss, Inspector, U. S. Immigration Service, taken before Frank O. Nebeker, a United States Commissioner in and for the Northern District of California, as follows, to-wit: That within the jurisdiction of the United States aforesaid, and within the Northern District of California, and after the passage by the Congress of the United States of an act entitled, "An Act to Amend an Act entitled 'An Act to execute certain treaty stipulations relating to Chinese' approved May 6, 1882, and the acts amendatory thereof and supplemental thereto," the said defendant and appellant did come into the United States from a foreign place, and having come, has remained within the United States; that the said defendant and appellant has been found and now is unlawfully within the United States, and that at all times hereinafter mentioned the said defendant and appellant is and was a laborer and a Chinese person, and a person of Chinese descent; and it appearing that the said defendant and appellant was duly apprehended upon said charge in the aforesaid [9] Northern District of California, and it appearing

that an examination and hearing was thereupon had before said United States Commissioner upon the said charge and said United States Commissioner thereupon made and entered his order of deportation as aforesaid, said defendant and appellant, TONG JEUNG, appearing at the hearing on appeal from said order of deportation by his counsel Stephen M. White, and the plaintiff and appellee appearing by I. M. Peckham, United States Attorney, and evidence having been introduced and the cause argued and submitted for decision;

And from the evidence produced before this court *is* appears and the court finds that the said defendant and appellant, TONG JEUNG, is a Chinese person and a person of Chinese descent and a laborer; and it appearing and this Court finds that said defendant and appellant has failed to show by any affirmative proof to the satisfaction of this court his lawful right to remain in the United States; and it appearing and this court finds that said defendant and appellant has been given sufficient opportunity to produce evidence and witnesses to show his right to remain in the United States, and has not made it appear to this court that he is a subject or citizen of any other country than China, and it appears and this Court finds that he is a Chinese laborer and is a subject of the Republic of China, and is not registered and is not a member of the exempt class of Chinese persons provided for in and by said Act of Congress;

NOW, THEREFORE, It is hereby ordered, adjudged and decreed that the said defendant and appellant, TONG JEUNG, be immediately removed from the United States to the Republic of China, and that said removal and deportation of said defendant and appellant be made from the Port of San Francisco, within the limits of the Northern District of California, and it is further ordered that said defendant and appellant be, and he hereby is committed to the custody of the United [10] States Marshal for the Northern District of California, for the purpose aforesaid, and that until such time as this judgment can be executed said defendant and appellant shall be detained in the County Jail of the County of San Francisco, in Northern District of California, at San Francisco, in said District, and in such other jails within the United States as it may become necessary for the Marshal or his deputies to leave the defendant and appellant during the execution of this judgment for safekeeping; and a certified copy of this judgment shall be the process upon which said defendant and appellant shall be conveyed to and detained in said jails, and the keepers of said jails shall receive him and detain him therein, and a certified copy of this judgment shall be the process upon which said removal of said defendant and appellant shall be made from the United States to the Republic of China.

And said process shall be executed by Fred L. Esola, United States Marshal for said District, or

such of his deputies as he may designate for that purpose.

Dated: This 5th day of July, 1933.

A. F. ST. SURE

United States District Judge.

(PICTURE OF THE CHINAMAN (TONG JEUNG) ATTACHED TO THE ORIGINAL COPY.)

[Endorsed]: Entered in Vol 29 Judg. and Decrees at Page 62-63. Filed Jul 5, 1933 1:52 P.M. [11]

[Title of Court and Cause.]

NOTICE OF APPEAL

To the Clerk of the above-entitled Court, to United States of America, the appellee and plaintiff, and to Henry H. McPike, Esq., United States Attorney, attorney for appellee and plaintiff:—

You and each of you will please take notice that Tong Jeung, the appellant and defendant in the above-entitled matter, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from the order and judgment rendered, made and entered herein on July 5th, 1933, in favor of appellee and plaintiff and against appellant and defendant.

Dated this 15th. day of July, 1933.

STEPHEN M. WHITE,

Attorney for Appellant and Defendant. [12]

[Title of Court and Cause.]

PETITION FOR APPEAL.

Comes now Tong Jeung, the appellant and defendant in the above-entitled matter, and respectfully shows:—

That on the 5th. day of July, 1933, the above-entitled Court made and entered its order and judgment in favor of appellee and plaintiff and against appellant and defendant, in which said order in the above-entitled cause certain *errors* were made to the prejudice of the appellant and defendant herein, all of which will more fully appear from the assignment of errors filed herewith.

Wherefore the appellant and defendant prays that an appeal may be granted in his behalf to the Circuit Court of Appeals of the United States for the Ninth Circuit thereof, for the correction of the errors as complained of, and further, that a transcript of the record, proceedings and papers in the above-entitled cause, as shown by the praecipe duly authenticated, may be sent and transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit thereof, and further, that the said appellant and defendant be held within the jurisdiction of this Court during the pendency of the appeal herein, and that meanwhile all further proceedings in this case be suspended, stayed and superceded until the final determination of said appeal and that said appellant and defendant be admitted to bail in the sum of \$2,500.00.

Dated this 15th. day of July, 1933.

STEPHEN M. WHITE,
Attorney for Appellant and Defendant. [13]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Now comes the defendant and appellant in the above-entitled cause by his attorney and specifies the following as the errors upon which he will rely and which he will urge upon the appeal in the above entitled matter, to-wit:—

-I-

That the Court erred in not holding that it had no jurisdiction over the person of the appellant and defendant and the subject matter of the proceedings.

-II-

That the Court erred in not holding that the taking of the appellant and defendant by Immigration Inspector Voss before Frank O. Nebeker, United States Commissioner for the Southern Division of the Northern District of California, before a warrant of arrest had been issued for the said appellant and defendant, was illegal.

-III-

That the Court erred in not holding that the appellant and defendant was illegally arrested by Immigrant Inspector Voss.

-IV-

That the Court erred in holding that the appellant and defendant was subject to deportation to China. [14]

WHEREFORE, the defendant and appellant, through his attorney, prays that the order and

judgment against the defendant and appellant adjudging him to be one not entitled to be or remain in the United States and directing his removal and deportation from the United States to China be reversed and for such other and further relief as the Court may deem meet and proper.

Dated this 15th. day of July, 1933.

STEPHEN M. WHITE,
Attorney for Defendant and Appellant.

[Endorsed]: Filed Jul 15, 1933 11:19 A.M. [15]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

It appearing to the above-entitled Court that Tong Jeung, the appellant and defendant herein, has this day filed and presented to the above Court his petition praying for an order of this Court allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and order of this Court in favor of appellee and plaintiff and against defendant and appellant, and good cause appearing therefor, - - -

IT IS HEREBY ORDERED that an appeal be and the same is hereby allowed as prayed for herein; and

IT IS HEREBY FURTHER ORDERED that the Clerk of the above-entitled Court make and prepare a transcript of all the papers, proceedings and records in the above-entitled matter and transmit the same to the United States Circuit Court of

Appeals for the Ninth Circuit within the time allowed by law; and

IT IS FURTHER HEREBY ORDERED that the execution of the order and judgment and all further proceedings in this case be suspended, stayed and superceded pending this appeal and that the appellant and defendant be enlarged on bond in the amount of \$2,500.00, pending this appeal and until further orders herein.

Dated this 15th. day of July, 1933.

A. F. ST. SURE
United States District Judge.

[Endorsed]: Filed Jul 15, 1933 11:19 A.M. [16]

[Title of Court and Cause.]

PRAECIPE.

To the Clerk of Said Court:

Sir:

Please issue copies of following papers for transcript on appeal:

1. Complaint filed before U. S. Commissioner Frank O. Neberker.
2. Judgment and Order of Deportation of U. S. Commission Frank O. Nebeker.
3. Notice of Appeal from judgment and order of deportation of U. S. Commissioner Frank O. Nebeker to United States District Court.
4. Stipulation of Facts.

5. Judgment and Order of Deportation of U. S. District Judge.
6. Notice of Appeal
7. Petition for Appeal.
8. Assignment of Errors
9. Order allowing Appeal
10. Citation on Appeal.
11. Praecipe.

STEPHEN M. WHITE

Attorney for Appellant and Defendant.

[Endorsed]: Filed Sep 25 1933 [17]

[Title of Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, WALTER B. MALING, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 17 pages, numbered from 1 to 17, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of United States of America vs. Tong Jeung, No. 24280S, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of Four Dollars and Fifty Cents (\$4.50) and that the said amount has been paid to me by the Attorney for the appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 26th day of September A. D. 1933.

[Seal]

WALTER B. MALING

Clerk.

By C. M. TAYLOR

Deputy Clerk. [18]

[Title of Court and Cause.]

CITATION ON APPEAL.

United States of America,—ss

The President of the United States, to United States of America, the Appellee and plaintiff, and to Henry H. McPike, Esq., United States Attorney, attorney for appellee and plaintiff,
GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within 30 days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's office of the United States District Court for the Northern District of California, wherein Tong Jeung, is appellant and defendant and you are appellee and plaintiff, to show cause, if any there be why the decree rendered against the said appellant and defendant, as in the said order allowing appeal mentioned,

should not be corrected, and why speedy justice should not be done to the party in that behalf.

Dated at San Francisco, California, this 15th. day of July, 1933.

A. F. ST. SURE,

United States District Judge.

[Endorsed]: Filed Jul 15 1933 11:18 AM [19]

[Endorsed]: Transcript of Record. Filed September 26, 1933. Paul P. O'Brien, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

